

AFZP-JAL  
7 Oct 99

INFORMATION PAPER

SUBJECT: Family Member Support

1. Purpose. To inform soldiers and family members of Army regulations and state laws requiring soldiers to support their families.

2. References.

a. AR 608-99, 1 November 1994.

b. Ga. Code Ann. section 19-6-15 (Michie 1994).

c. Ga. Code Ann. sections 18-4-130 to 135 (Michie 1994).

d. Defense Finance and Accounting Service, ATTN: DFAS-IN-DGG, #22, 8899 East 56th Street, Indianapolis, Indiana 462490160, [POC for Involuntary Allotment Modifications].

3. Facts.

a. How much support is a soldier required to provide his family members upon the separation of husband and wife?

Army Regulation 608-99 establishes guidelines for support of family members. If a court order or written agreement states the amount of support that must be provided, then the soldier must provide the amount stated. However, if no court order or written agreement exists, then the following minimum financial support requirements will dictate until the parties obtain an order or written agreement:

(1) If the soldier has one-family unit (no children from prior marriage or court order establishing paternity), and the family is not living in government quarters, the soldier will provide an amount equal to BAQ-WITH. This applies whether or not the soldier is receiving BAQ as part of his or her pay. If the family is living in government quarters, the soldier will provide an amount equal to the difference between BAQ-WITH and BAQ-WITHOUT (Save Pay).

(2) If the soldier has multiple family units, each supported family member will receive a pro-rata share of BAQ-WITH. A soldier must continue to provide court ordered support as ordered although payments to remaining family members might exceed the BAQ amount.

b. If the soldier fails to provide support, who should I contact?

The soldier's commanding officer should be contacted. If the family member is unsuccessful, contact the Legal Assistance office for an appointment. The commander may excuse support payments only under narrow circumstances. If a soldier is under a court order to provide support, the recipient may seek assistance from the local Child Support Enforcement Agency.

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If a written agreement requires support payments, then the soldier may be sued for breach of contract.

c. I'm not receiving BAQ. Do I still have to pay support?

Yes. The support obligation under AR 608-99 applies regardless of whether you are receiving BAQ. Additionally, even though BAQ was replaced by BAH in January 1998, you must still provide an amount equivalent BAQ at the with dependent rate as support. This amount can be obtained at the finance office or the Legal Assistance office.

d. Can a military attorney file the court documents for me?

Only a civilian attorney can represent you in civilian court. A Legal Assistance Attorney can refer you to the appropriate governmental office or civilian attorney.

e. How do I know how much support I need?

The custodial parent should prepare a monthly budget. Army Community Services can assist you with this at no charge.

f. How does a court determine the amount of support payments?

State courts set this amount by using guidelines based on both the custodial and non-custodial parents' income. A court will also consider the number of children involved. Generally, a court can raise or lower guideline amounts.

g. When the child is visiting the non-custodial parent, can the non-custodial parent reduce the support payments?

Only when the court order or written agreement states that this is permissible.

h. When do support payments stop?

They may stop when a court orders it stopped or, if no court order exists, at a date the parties agree to in writing. Otherwise, child support payments usually stop upon the emancipation of the child. State laws vary as to when a child is emancipated. Army regulation states that support should continue until a court decree is ordered, a written agreement entered into, or the child reaches 18 (unless the child is married or is an active-duty service member).

i. Can the court take money out of a soldier's paycheck for failure to provide ordered support?

Many states permit garnishment of wages. Georgia permits this practice. In addition, the Defense Finance and Accounting Service (DFAS) can withhold support payments by involuntary allotment. DFAS can only withhold an

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allotment if it receives either a court order and a statement of two-month arrearages from a support enforcement agency or a writ of garnishment from a judge.

j. What if the custodial parent requires more support in the future? What if the non-custodial parent is unable to make the ordered payments?

If the support is established in an agreement, then the parties may agree to modify the support obligation. If a court order establishes support, then either party can petition the court to modify the amount ordered. Usually, the petitioner must show a substantial change in circumstances to successfully modify the support amount.

k. What do I do if a court has ordered a reduction in payments but the Army is still withholding the former amount?

You should send a copy of the court order to DFAS. Legal Assistance will help you forward the document to the appropriate office and determine if the document is sufficient.

4. Caution. This paper provides general information and is only intended to answer the most commonly asked questions on this topic. This paper is not intended to provide definitive resolution of any specific problem. You should call Legal Assistance at 767-8809/8819 or 352-5115/5116 to discuss your particular situation.

5. Point of contact is Legal Assistance at 767-8809/8819(S) or 352-5115/5116(H) or 352-5115/5116(H).